IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

APPEAL FROM ORDER No.91 of 1991

For Approval and Signature:

HON'BLE MR.JUSTICE K.M.MEHTA Sd/-

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

GUJARAT INDUSTRIAL DEVELOPMENT CORPORATION

Versus

NARAYANSINGH PREMSINGH

Appearance:

1. Appeal from Order No. 91 of 1991

MR YF MEHTA for Appellant Nos. 1-2

MR ARUN H MEHTA for Appellant Nos. 1

MR KS NANAVATI for Respondent Nos. 1-2

CORAM : HON'BLE MR.JUSTICE K.M.MEHTA

Date of decision: 10/12/2003

ORAL JUDGEMENT

1. The appellants (original defendants) have filed this appeal against the judgement and order dated

27-03-1990 passed by the Auxiliary Chamber Judge, Court No.9, City Civil Court, Ahmedabad in Notice of Motion at Exh.5/6 taken out in Civil Suit No.3363 of 1989, whereby, allowing the Notice of Motion Exh.5/6 filed by the plaintiffs, the interim relief granted earlier was made absolute till final hearing and disposal of the suit.

2. It is the case of the plaintiffs that plaintiff No.1 - M/s.Narayansingh Premsingh is carrying on business as a textile processing unit in the name of Prem Industries and plaintiff No.2 M/s.Premsingh Gurcharansing is also carrying on business as textile texturising unit in the name of Pee Gee Crimpers. By an agreement dated 24-11-1980, executed between the plaintiffs and the defendants, plaintiff No.1 has been allotted Plot admeasuring 5727 sq. mtrs. and plaintiff No.2 has been allotted 2355 sq. mtrs. in the G.I.D.C., Naroda for running their respective units. The plaintiffs are carrying on their business since 1980. The plaintiffs further submitted that as there was shortage of water, the plaintiffs were compelled to dig their own bore within the premises in the year 1987 and since then the plaintiffs have been using water from the common bore. On 10-07-1989 the officers of the G.I.D.C. visited the site and threatened the plaintiffs and stated that you cannot use the bore in the land because the same is contrary to the terms of the agreement entered into between the plaintiffs and the defendants. The plaintiffs, therefore, filed the aforesaid suit and also prayed for temporary injunction for restraining the defendants, their men, servants, agents subordinates from taking coercive and forcible action for closing and removing the bore / pipes, air compressors etc. connected with the bore in the premises of the plaintiffs.
As stated above, the learned Judge has granted interim injunction.

3. Mr.A.H.Mehta, learned Sr. counsel with Y.F.Mehta appearing on behalf of the appellants, stated that the reasoning of the learned Judge is not correct. He has relied upon one of the clauses which normally the Gujarat Industrial Development Corporation entered into with the plaintiff. The identical clause is as under :

"That they will not make any excavation upon any part of the demised premises nor remove any stone, sand, gravel, clay or earth, therefore except for the purpose of forming foundation of building or for the purpose of executing any work pursuant to the terms and of this Lease. "

He, therefore, submitted that action of the plaintiffs excavating the bore is, therefore, contrary to the terms and conditions.

4. In fact, the learned counsel for the appellants has stated that matter is covered by the judgement of this Hon'ble Court in the case of M/s. Kwality Pulp and Paper Mills, Vapi Vs. Gujarat Industrial Development Corporation, Vapi, reported in 1988 (1) G.L.R. 160. The learned Judge in para 3 of the said judgement has observed as under :

" .....

. . . . . The term 'excavate' would include even digging of land for the purpose of making 'bore' with a view to fetch water. A similar question came up for consideration in Gujarat Industrial Development Corporation V. M/s. Ratnadeep Industries, Civil Revision Application No.994 of 1984 decided on December 12, 1984 (Coram : G.T. Nanavati, J). After referring to the dictionary meaning of the term ' excavate', the Court observed as follows :

"When a bore is constructed for the purpose of obtaining water excavation of the land is done. The word 'bore' means to make a hole in or through something by hollowing it out. Thus, when boring is done for the purpose of obtaining underground water, what is first done is to make a hole in the land by digging out a portion there of so that in that hollow pipe can be inserted. By making the hole deeper and deeper by digging out more and more land and by inserting pipes therein underground water is reached and thereafter with the help of a pump water is taken out. This is the normal method of boring. It is not the case of the opponent that it inserted pipes in the earth without digging out the land or a part thereof. If the land is thus dug out, it would certainly amount to excavation of land."

I am in respectful agreement with the view taken by my learned brother G. T. Nanavati, J, in the aforesaid case. By no stretch of reasoning it can be said that digging the land for making bore with a view to fetch water would not amount to excavation of land. In this view of the matter,

> if the respondent - Corporation insists that without the permission of the Corporation the petitioner cannot excavate land or any part thereof for the purpose of boring. The respondent-Corporation cannot be said to be in any way acting arbitrarily or unreasonably. On the contrary the respondent-Corporation would be within its rights if it seeks to enforce the terms and conditions of the lease deed. "

5. The learned counsel for the appellants has also submitted that the aforesaid judgement is also confirmed in L.P.A. No.13 of 1998 in a Division Bench (Coram : R.C.Mankad, Acting C.J. and R.K.Abichandani, J) on 04-10-1999.

6. In view of the same, the Appeal from Order is hereby allowed. The judgement and order of the learned trial Judge dated 27-03-1990 is hereby quashed and set aside.

Sd/-

[K.M.MEHTA, J]

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'Bhavesh'